

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ERLENE KAY REGER,¹

Petitioner,

v.

OREGON,

Respondent.

Case No. 3:22-cv-01318-JE

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John Jelderks issued Findings and Recommendation in this case on February 6, 2023. ECF 24. Judge Jelderks recommended that this Court dismiss with prejudice the Amended Petition for Writ of Habeas Corpus. *Id.* Judge Jelderks found the petition untimely because Petitioner filed her habeas petition after 568 untold days had elapsed, placing her outside of the statutory one-year deadline under 28 U.S.C. 2244(d)(1)(A). *Id.* No party has filed objections.

Under the Federal Magistrates Act (Act), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

¹ Plaintiff was convicted under her former name. Her current name is Erlene Kay Russell.

§ 636(b)(1). If a party objects to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3). If no party objects, the Act does not prescribe any standard of review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Jelderks’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge Jelderks’s Findings and Recommendation, ECF 24. The Court DENIES the Amended Petition for Writ of Habeas Corpus (ECF 12). The Court also declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 9th day of March, 2023.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge